

Mark G. Worischek/Bar No. 011147  
Shanks Leonhardt /Bar No. 025595  
**SANDERS & PARKS, P.C.**  
3030 North Third Street, Suite 1300  
Phoenix, AZ 85012-3099

Mark G. Worischek  
Direct Phone: 602.532.5795  
Direct Fax: 602.230.5054  
E-Mail: Mark.Worischek@sandersparks.com

Shanks Leonhardt  
Direct Phone: 602.532.5677  
Direct Fax: 602.230.5077  
E-Mail: Shanks.Leonhardt@sandersparks.com

Firm E-mail: Minutes@sandersparks.com

*Attorneys for Defendants Phoenix Wellness Massage, Inc.  
and Phoenix Wellness Avondale, Inc.*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
**IN AND FOR THE COUNTY OF MARICOPA**

██████████ a single woman,  
Plaintiff,

v.

MASSAGE ENVY FRANCHISING, LLC.,  
an Arizona corporation; PHOENIX  
WELLNESS MASSAGE, INC., an Arizona  
corporation, d/b/a MASSAGE ENVY SPA;  
PHOENIX WELLNESS AVONDALE,  
INC., an Arizona corporation, d/b/a  
MASSAGE ENVY SPA; ██████████  
and JANE DOE ██████████ husband and wife;  
JOHN DOE I-X; JANE DOE I-X; and Black  
& White Corporations I-X; ABC  
Partnerships I-X,

Defendants.

Case No.: ██████████

**DEFENDANTS PHOENIX  
WELLNESS MASSAGE, INC. AND  
PHOENIX WELLNESS AVONDALE,  
INC.'S ANSWER**

*(Assigned to the Honorable Margaret  
Mahoney)*

Defendants PHOENIX WELLNESS MASSAGE, INC. and PHOENIX WELLNESS  
AVONDALE, INC., ("Phoenix Wellness Defendants") by and through undersigned counsel, for  
their answer to Plaintiff's Complaint hereby admit, deny and allege as follows:

## JURISDICTIONAL ALLEGATIONS

1  
2 1. Phoenix Wellness Defendants admit the allegations in Paragraph 1 of Plaintiff's  
3 Complaint based on information and belief.

4 2. Answering Paragraph 2 of Plaintiff's Complaint, Phoenix Wellness Defendants  
5 admit that Massage Envy Franchising, LLC ("MEF") is authorized and doing business in Arizona.  
6 Phoenix Wellness Defendants deny the remaining allegations in Paragraph 2 of Plaintiff's  
7 Complaint.

8 3. Answering Paragraph 3 of Plaintiff's Complaint, Phoenix Wellness Defendants  
9 admit that Phoenix Wellness Massage, Inc. is an Arizona corporation authorized and doing  
10 business in Arizona at the address listed in Paragraph 3. Phoenix Wellness Defendants deny the  
11 remaining allegations in Paragraph 3 of Plaintiff's Complaint.

12 4. Answering Paragraph 4 of Plaintiff's Complaint, Phoenix Wellness Defendants  
13 admit that Phoenix Wellness Avondale, Inc. is an Arizona corporation authorized and doing  
14 business in Arizona at the address listed in Paragraph 4. Phoenix Wellness Defendants deny the  
15 remaining allegations in Paragraph 4 of Plaintiff's Complaint.

16 5. Answering Paragraph 5 of Plaintiff's Complaint, Phoenix Wellness Defendants lack  
17 sufficient information to admit or deny the allegations in Paragraph 5 and, thus, deny those  
18 allegations.

19 6. Answering Paragraph 6 of Plaintiff's Complaint, Phoenix Wellness Defendants  
20 admit [REDACTED] was an employee of Phoenix Wellness Massage, Inc. during the  
21 relevant periods of time alleged in Plaintiff's Complaint. Phoenix Wellness Defendants deny the  
22 remaining allegations in Paragraph 6 of Plaintiff's Complaint.

23 7. Answering Paragraph 7 of Plaintiff's Complaint, Phoenix Wellness Defendants lack  
24 sufficient information to admit or deny the allegations in Paragraph 7 and, thus, deny those  
25 allegations.

26 8. Phoenix Wellness Defendants deny the allegations in Paragraph 8 of Plaintiff's  
27 Complaint.  
28

## GENERAL ALLEGATIONS

9. Answering Paragraph 9 of Plaintiff's Complaint, Phoenix Wellness Defendants reassert their responses to Paragraphs 1-8 as if set forth fully herein.

10. Answering Paragraph 10 of Plaintiff's Complaint, Phoenix Wellness Defendants admit that Phoenix Wellness Defendants operated the Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona and that Plaintiff was a customer of that Massage Envy location on December 1, 2015. Phoenix Wellness Defendants deny the remaining allegations in Paragraph 10 of Plaintiff's Complaint.

11. Answering Paragraph 11 of Plaintiff's Complaint, Phoenix Wellness Defendants admit that [REDACTED] was an employee of Phoenix Wellness Massage, Inc. at the Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona on December 1, 2015. Phoenix Wellness Defendants deny the remaining allegations in Paragraph 11 of Plaintiff's Complaint.

12. Answering Paragraph 12 of Plaintiff's Complaint, Phoenix Wellness Defendants admit that [REDACTED] provided massage therapy to Plaintiff at the Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona on December 1, 2015. Phoenix Wellness Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 12 and, thus, deny those allegations.

13. Answering Paragraph 12 of Plaintiff's Complaint, Phoenix Wellness Defendants admit that Plaintiff reported to Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona that [REDACTED] had engaged in alleged misconduct during her massage on December 1, 2015.

## COUNT I

**Negligent hiring/ retention/ control / supervision / training  
(Defendants Massage Envy / Phoenix Wellness Massage / Phoenix Wellness Avondale)**

14. Answering Paragraph 14 of Plaintiff's Complaint, Phoenix Wellness Defendants reassert their responses to Paragraphs 1-13 as if set forth fully herein.

15. Answering Paragraph 15 of Plaintiff's Complaint, Phoenix Wellness Defendants operated Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona in

1 compliance with the standard of care and supervised, hired, and trained employees in compliance  
2 with the standard of care, including but not limited to all aspects of prohibited contact or touching  
3 of customers. Phoenix Wellness Defendants deny the remaining allegations in Paragraph 15.

4 16. Phoenix Wellness Defendants deny the allegations in Paragraph 16 of Plaintiff's  
5 Complaint.

6 17. Phoenix Wellness Defendants deny the allegations in Paragraph 16 of Plaintiff's  
7 Complaint.

## 8 **COUNT II**

### 9 **Negligent protection / safety on the premises**

#### 10 **(Defendants Massage Envy / Phoenix Wellness Massage / Phoenix Wellness Avondale)**

11 18. Answering Paragraph 18 of Plaintiff's Complaint, Phoenix Wellness Defendants  
12 reassert their responses to Paragraphs 1-17 as if set forth fully herein.

13 19. Answering Paragraph 19 of Plaintiff's Complaint, Phoenix Wellness Defendants  
14 operated Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona in  
15 compliance with the standard of care, including but not limited to any duties of care to maintain  
16 safe premises for business invitees. Phoenix Wellness Defendants deny the remaining allegations  
17 in Paragraph 19.

18 20. Answering Paragraph 20 of Plaintiff's Complaint, Phoenix Wellness Defendants  
19 operated Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona in  
20 compliance with the standard of care, including but not limited to any duties of care to maintain  
21 safe premises for business invitees. Phoenix Wellness Defendants deny the remaining allegations  
22 in Paragraph 20.

23 21. Answering Paragraph 21 of Plaintiff's Complaint, Phoenix Wellness Defendants  
24 operated Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona in  
25 compliance with the standard of care, including but not limited to any duties of care to maintain  
26 safe premises for business invitees. Phoenix Wellness Defendants deny the remaining allegations  
27 in Paragraph 21.  
28

1       22.   Phoenix Wellness Defendants deny the allegations in Paragraph 22 of Plaintiff's  
2 Complaint.

3       23.   Phoenix Wellness Defendants deny the allegations in Paragraph 23 of Plaintiff's  
4 Complaint.

5                                   **COUNT III**  
6                                   **(Negligence / Respondeat Superior)**  
7                                   **(All Defendants)**

8       24.   Answering Paragraph 24 of Plaintiff's Complaint, Phoenix Wellness Defendants  
9 reassert their responses to Paragraphs 1-23 as if set forth fully herein.

10       25.   Answering Paragraph 25 of Plaintiff's Complaint, Phoenix Wellness Defendants  
11 lack sufficient information to admit or deny the allegations in Paragraph 25 and, thus, deny those  
12 allegations.

13       26.   Phoenix Wellness Defendants deny the allegations in Paragraph 26 of Plaintiff's  
14 Complaint.

15       27.   Phoenix Wellness Defendants deny the allegations in Paragraph 27 of Plaintiff's  
16 Complaint.

17       28.   Phoenix Wellness Defendants deny the allegations in Paragraph 28 of Plaintiff's  
18 Complaint.

19                                   **COUNT IV**  
20                                   **(Lack of Informed Consent)**  
21                                   **(All Defendants)**

22       29.   Answering Paragraph 29 of Plaintiff's Complaint, Phoenix Wellness Defendants  
23 reassert their responses to Paragraphs 1-28 as if set forth fully herein.

24       30.   Answering Paragraph 30 of Plaintiff's Complaint, Phoenix Wellness Defendants  
25 operated Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona in  
26 compliance with the standard of care, including but not limited to any duties regarding the  
27 performance of massage treatment procedures. Phoenix Wellness Defendants deny the remaining  
28 allegations in Paragraph 30.

1 31. Phoenix Wellness Defendants deny the allegations in Paragraph 31 of Plaintiff's  
2 Complaint.

3 32. Phoenix Wellness Defendants deny the allegations in Paragraph 32 of Plaintiff's  
4 Complaint.

5 **ADDITIONAL RESPONSES, ALLEGATIONS**  
6 **AND AFFIRMATIVE DEFENSES**

7 1. Phoenix Wellness Defendants deny each any every allegation of Plaintiff's  
8 Complaint and its prayer for relief, not specifically admitted herein.

9 2. Plaintiff's Complaint against Phoenix Wellness Defendants fails to state a claim  
10 upon which relief can be granted.

11 3. To the extent Plaintiff suffered any damages, those damages were caused, in whole  
12 or part, by the actions or inactions of Plaintiff and/or by others over which Phoenix Wellness  
13 Defendants had no control such that Phoenix Wellness Defendants did not proximately cause  
14 those damages.

15 4. To the extent any sexual contact occurred between Plaintiff and [REDACTED] such sexual  
16 conduct was consensual.

17 5. Phoenix Wellness Defendants complied with the applicable standard of care in  
18 operation of Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona,  
19 including but not limited to hiring, training and supervising its employees.

20 6. To the extent Plaintiff suffered any damages, those damages were caused, in whole  
21 or in part, by others, including those who were acting outside the course and scope of any authority  
22 for Phoenix Wellness Defendants such that Phoenix Wellness Defendants are not vicariously  
23 liable for such others' conduct.

24 7. To the extent Plaintiff suffered any damages, Plaintiff is barred from recovery of  
25 those damages because of the speculative or unreasonable nature of the damages.

26 8. Plaintiff's claim for punitive damages violates the due process of law clause and the  
27 equal protection of the laws clause of the Fourteenth Amendment to the United States  
28



1 Constitution, violates the due process of law clause of Article II, Section 4 of the Arizona  
2 Constitution, violates the prohibition against excessive fines contained in Article II, Section 15 of  
3 the Arizona Constitution, and violates the prohibition of ex post facto laws and laws impairing the  
4 obligation of contracts contained within Section 10, ¶ 1 of Article I of the United States  
5 Constitution.

6 9. Plaintiff's claim for punitive damages is deficient insofar as Phoenix Wellness  
7 Defendants' conduct, even as alleged, does not meet the standard for an award of punitive  
8 damages under Arizona law.

9 10. Phoenix Wellness Defendants presently have insufficient knowledge or information  
10 on which to form a belief as to whether they may have additional, as yet unasserted, affirmative  
11 defenses available. Phoenix Wellness Defendants reserve the right to assert additional affirmative  
12 defenses, including but not limited to those set forth in Rule 8(c), Arizona Rules of Civil  
13 Procedure, in the event discovery indicates that they would be appropriate.

14 WHEREFORE, having fully answered Plaintiff's Complaint, Phoenix Wellness  
15 Defendants hereby request the following relief:

- 16 1. An Order dismissing Plaintiff's Complaint with prejudice and awarding nothing to  
17 Plaintiff;  
18 2. An Order awarding Phoenix Wellness Defendants all costs incurred; and  
19 4. An Order awarding any such other relief as the Court deems proper in this matter.  
20

21 **RESPECTFULLY SUBMITTED** this 9<sup>th</sup> day of April, 2018.

22 **SANDERS & PARKS, P.C.**  
23

24  
25 By /s/Shanks Leonhardt  
26 Mark G. Worischeck  
27 Shanks Leonhardt  
28 3030 North Third Street, Suite 1300  
Phoenix, AZ 85012-3099  
*Attorneys for Defendants Phoenix Wellness  
Massage, Inc. and Phoenix Wellness Avondale, Inc.*

1 **ORIGINAL** of the foregoing delivered via E-Filing System  
2 on this 9th day of April, 2018 with:

3 Clerk of the Court  
4 **MARICOPA COUNTY SUPERIOR COURT**  
5 Central Court Building  
6 201 W. Jefferson  
7 Phoenix, AZ 85003-2243

8 **COPIES** of the foregoing delivered via E-Filing System  
9 on this 9th day of April, 2018 to:

10 Honorable Margaret Mahoney  
11 **MARICOPA COUNTY SUPERIOR COURT**  
12 East Court Building  
13 101 W. Jefferson, Courtroom 711  
14 Phoenix, AZ 85003-2243

15 Robert E. Pastor  
16 **MONTOYA, LUCERO & PASTOR, P.A.**  
17 3200 N. Central Ave., Ste. 2550  
18 Phoenix, AZ 85012  
19 [repastore@mipattorneys.com](mailto:repastore@mipattorneys.com)  
20 *Attorneys for Plaintiff*

21 Bradley D. Shwer  
22 **THORPE SHWER, P.C.**  
23 3200 N. Central Ave., Ste. 1560  
24 Phoenix, AZ 85012  
25 [bshwer@thorpeshwer.com](mailto:bshwer@thorpeshwer.com)  
26 *Attorneys for Defendant Massage Envy Franchising, LLC*

27 By: /s/A. Burns  
28